

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
GEORGE K. WONG, State Bar #78225  
DAVID L. NORMAN, State Bar #148556  
Deputy City Attorneys  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3989  
Facsimile: (415) 255-0733  
E-Mail: david.norman@sfgov.org

Attorneys for City and County of San Francisco;  
San Francisco District Attorney's Office;  
James Cheng; Linda Chin; James Fields, Balmore  
Hernandez, Veronica Ng, Ivar Satero and Preston  
Tom

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT**, a multi-county rapid  
transit district established and existing under  
the laws of California,

Plaintiff,

vs.

**WILLIAM D. SPENCER**, an individual;  
**F.W. SPENCER & SON, INC.**, a California  
corporation; **BRISBANE MECHANICAL  
CO.**, a California corporation; **WILLIAM  
MCGAHAN**, an individual; **BRUCE R.  
BONAR**, an individual; and **DOES 1-25**,

Defendant.

Case No. C 04 4632 SI

**MOTION TO QUASH SUBPOENAS  
SERVED ON (1) THE CITY AND  
COUNTY OF SAN FRANCISCO, (2)  
THE SAN FRANCISCO DISTRICT  
ATTORNEY'S OFFICE AND FOR SAN  
FRANCISCO'S' EMPLOYEES: (3)  
JAMES CHENG; (4) LINDA CHIN; (5)  
JAMES FIELDS; (6) BALMORE  
HERNANDEZ; (7) VERONICA NG; (8)  
IVAR SATERO; AND (9) PRESTON  
TOM;**

Date: September 29, 2006  
Time: 9:00 a.m.  
Judge: Hon. Susan Illston  
Place: Courtroom 10, 19<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA

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1 **I. INTRODUCTION & FACTUAL BACKGROUND**

2 **A. The City's Action vs. The Spencer Parties**

3 Beginning in September 2002, the City and County of San Francisco (the "City") has  
4 pursued a lawsuit against William D. Spencer, his companies F.W. Spencer & Son, Inc. (FWS")  
5 and Brisbane Mechanical Company ("BMC"), FWS's president Bruce Bonar and FWS's and  
6 BMC's counsel William McGahan (together, "the Spencer Parties"). That action, which was first  
7 filed in this District; is now captioned "Public Works Cases," California Judicial Council  
8 Coordination Proceeding 4379; and is venued in Contra Costa County Superior Court. On July  
9 24, 2006, the City and the Spencer Parties participated in mediation which settled that action,  
10 subject to approval by the San Francisco Board Of Supervisors.

11 On August 1, 2006, the Spencer Parties issued a subpoena in this present BART action  
12 seeking records from the San Francisco District Attorney's Office related to its investigation of  
13 San Luis Gonzaga Construction, Inc. ("SLG") and its owners Virgilio and Geradina Talao. On  
14 August 2, 2006, the Spencer Parties issued a number of subpoenas in this same action seeking to  
15 depose the City and seven of its employees, including: James Cheng, Linda Chin, James Fields,  
16 Balmore Hernandez, Veronica Ng, Ivar Satero and Preston Tom. Five of those nine depositions  
17 are noticed for August 23, 2006, with the remaining four depositions to take place on August 24  
18 and 28, 2006. Evidently, the Spencer parties are scrambling to take those depositions before the  
19 discovery cutoff in the action, which is set for August 29, 2006; and for several reasons, both the  
20 City, the San Francisco District Attorney's Office and BART have filed objections to those  
21 depositions, or productions, going forward.

22 First, in their haste, the Spencer Parties failed to personally serve any of the individual  
23 deponents. Instead, the process server simply left the subpoenas at the witnesses' places of  
24 business.

25 Second, the Spencer Defendants failed to provide the City, the San Francisco District  
26 Attorney's Office and the City's individual employees with the witness fees required under  
27 Federal Rule Of Civil Procedure Rule 45(b)(1). Thus, each of those subpoenas must be quashed.  
28

1 Third, concerning the subpoena served on the City, that subpoena also must be quashed  
 2 where the scope of the subpoena is unreasonably burdensome and provides inadequate time for  
 3 the City to comply with the subpoena. The documents sought include 19 categories of records,  
 4 for eight different San Francisco public work projects and include literally hundreds of boxes of  
 5 records located in twelve different facilities. The Spencer parties also seeks to depose the City's  
 6 witnesses regarding 49 different topic areas or categories which largely resemble the topics the  
 7 Spencer Parties had noticed for deposition in the City's separate action. To allow the Spencer  
 8 Parties merely to re-serve that notice on the City and to impose that same burden in BART's  
 9 action where the City's projects have far lesser, if any relevance, is pernicious. Further, the City  
 10 has met and conferred with the Spencer Parties' counsel concerning the limited relevance the  
 11 subjects of those subpoenas have in this action, and the Spencer Parties' only response concerns  
 12 the limited issues raised by BART in one deposition concerning one airport contract, SFIA  
 13 Contract No. 5600.C. The Spencer Parties will not discuss the relevance of the subpoenas served  
 14 on the San Francisco District Attorney's Office and City personnel concerning the Moscone  
 15 Center Expansion Project, the Jail and Airport projects other than the 5600.C project. For that  
 16 reason, the Court must also quash the Spencer Parties' subpoena on the City.

17 Lastly, the timing of the depositions is absurd. The Spencer Parties seek for San  
 18 Francisco District Attorney's office to produce records, and to depose the City's Persons Most  
 19 Knowledgeable, and three other City witnesses – James Cheng, Balmore Hernandez and  
 20 Veronica Ng, all on August 23, 2006. The City should not be forced to prepare its witnesses and  
 21 appear for deposition under such circumstances because the Spencer Parties have been dilatory  
 22 and wish to cram those depositions in before the August 29<sup>th</sup> cutoff. Further, several of those  
 23 witnesses are also on vacation, including Ms. Chin and Mr. Satero.

24 **B. The District Attorney's Office's Investigation Regarding San Luis Gonzaga**  
 25 **Construction, Inc. And The Spencer Parties.**

26 The San Francisco District Attorney's Office has an open criminal investigation into  
 27 claims of theft public funds and false claims that pertains to government contracts at the Airport.  
 28 Apart from the District Attorney's Office 's investigation, (1) the City brought lawsuits against

both Tutor-Saliba Corporation and the Spencer Parties for racketeering and for frauds related to the award and performance of government contracts at the Airport; and (2) BART brought a lawsuit against the Spencer Parties for racketeering and for frauds on BART's contracts. The San Francisco District Attorney's Office was never a party to the City's or BART's lawsuits. Virgilio and Geradina Talao (the "Talaos") are now potential witnesses in BART's litigation.

As part of the San Francisco District Attorney's Office's criminal investigation, Assistant District Attorney Tom Bogott and an investigator from the District Attorney's Office interviewed the Talaos on 12/05/01, 12/06/01, 12/11/01, 01/23/02, 01/24/02, 01/31/02, 02/07/02, 02/12/02, 02/21/02, 03/04/02, and 03/07/02. Counsel for both the City and Tutor-Saliba have previously requested access to the documents in question; but all such requests were denied because the criminal investigative file is work product and confidential. The investigation remains open.

The Spencer Parties' subpoena also is overbroad where it seeks all documents that relate to interviews of any person by the San Francisco District Attorney's Office concerning frauds at the Airport and are unrelated to BART's projects. The subpoena is attached as an exhibit to the Norman Declaration.

## **II. ARGUMENT**

### **A. The Court Must Quash The Spencer Parties' Subpoenas For Failure To Comply With Rule 45.**

#### **1. The Court Must Quash The Subpoenas Where The Spencer Parties Did Not Personally Serve The City's Employees.**

Federal Rule of Civil Procedure Rule 45 requires that a subpoena shall be made by delivering a copy of the subpoena upon the person named therein; and if the person's attendance is commanded by tendering to that person the fees for one day's attendance and the mileage allowed by law. (FRCivP Rule 45.) Generally, personal service is required. (9A C. Wright & A. Miller, *Federal Practice and Procedure: Civil 2d* § 2454 (1995); Schwarzer, Tashima & Wagstaffe, Cal. Practice Guide : FED. CIV. PRO. BEFORE TRIAL (The Rutter Group 2006) §11:2271- 2272; *Jin v. Rodriguez*, Slip Copy, 2006 WL 39091 (C.A. 9th (E.D. Cal.) January 5, 2006). The Spencer Parties made no attempt to serve personally the City's individual employees, CITY'S Mot. to Quash Subpoenas.

nor were Messrs. Cheng, Fields, Hernandez, Satero, Ms. Chin and/or Ms. Ng served personally. Accordingly the subpoenas are invalid and must be quashed.

**2. The Court Must Quash The Subpoenas Where The Spencer Parties Did Not Include Witness Fees To Either The City or The City's Employees.**

As noted above, Rule 45 requires that the fees for one day's attendance and the mileage allowed by law must accompany a subpoena. (FR CivP Rule 45.) Where those fees are not tendered, the subpoenas, again, are invalid. (9A C. Wright & A. Miller, *Federal Practice and Procedure: Civil 2d* § 2454 (1995); Schwarzer, Tashima & Wagstaffe, Cal. Practice Guide : FED. CIV. PRO. BEFORE TRIAL (The Rutter Group 2006) §11:2279; *CF&I Steel Corp. v. Mitsui & Co. (USA) Inc.*, 713 F.2d 494, 496 (9<sup>th</sup> Cir, 1983); *Jin v. Rodriguez*, Slip Copy, 2006 WL 39091 (E.D. Cal. January 5, 2006). Because The Spencer Parties failed to provide the City, the San Francisco District Attorney's Office and the City's individual employees with the required witness fees and mileage, the subpoenas are invalid and must be quashed.

**B. The Court Must Quash The Spencer Parties' Subpoenas On CITY Where It Fails To Provide CITY With Reasonable Notice & Imposes Undue Burden On The City.**

The Court must quash a subpoena upon finding that it fails to allow reasonable time for compliance or otherwise subjects the witness to undue burden. (Rule 45(c)(3)(A)(i)). Discovery may be refused where the burden of the proposed discovery outweighs its likely benefit taking into account: (a) the needs of the case; (b) the parties resources; (c) the importance of the issues at stake; and (d) the role of the proposed discovery in resolving those rules. (FRCP Rule 26(b)(2); *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 714( 1<sup>st</sup> Cir. 1998) Further, an abusively drawn subpoena may be quashed because it imposes an undue burden on the witness and is drawn way too broad without an attempt being made to try to tailor the information requests to the immediate needs of the case. (Schwarzer, Tashima & Wagstaffe, Cal. Practice Guide : FED. CIV. PRO. BEFORE TRIAL, *supra*, §11:2303 - 11.2304); *Mattel Inc. v. Walking Mountain Products*, 353 F.3d 792, 813 (9<sup>th</sup> Cir. 2003).

The gist of BART's action against the Spencer Parties is BART's claim that FWS and its owner perpetrated a scheme to defraud BART by claiming DBE participation credit for the joint CITY'S Mot. to Quash Subpoenas.

1 venture of San Luis Gonzaga Construction, Inc. ("SLG") and BMC ("SLG/BMC") on BART's  
2 Expansion To SFO Projects, a scheme that the Spencer Parties had used previously over a course  
3 of years to defraud the City. BART cannot recover any monies for the City; and in fact, the City  
4 has tentatively settled its action with the Spencer Parties. Accordingly, the role of the City, its  
5 employees and projects, is relegated to providing a factual predicate to the Spencer Parties' use of  
6 the SLG/BMC joint venture to claim MBE participation prior to the Spencer Defendants'  
7 involvement on the BART projects. Yet, the Spencer Parties seek to depose what could be a  
8 dozen City witnesses on topics so far a field, that they would have little, or no, relevance in the  
9 present action. This includes the Spencer Defendants' request to depose the City concerning its  
10 review of: (a) unsuccessful bids for the projects that were ultimately awarded to prime  
11 contractors utilizing SLG/BMC as a MBE subcontractor (*See*, topics 2, 5, 7, 12, 18, 24, 27, 28,  
12 30, 33, 36, 39, 41 and 42 ); (b) the City's application of its MBE/WBE Ordinance to each bid for  
13 those same contracts, including unsuccessful bids (*See*, topics 4, 9, 15, 21, 27, 33, 39 and 45); (c)  
14 the City's criteria for awarding its contracts (*See*, topics 14, 20, 26, 32, 38 and 44 ); (d) the City's  
15 and its Human Rights Commissions ("HRC") approval and award of MBE participation credit  
16 for the joint venture of SLG and Inet on the 5520.J project that is never references in BART's  
17 complaint (*See*, topics 11- 14); and (e) the joint ventures between Troy's Contracting, Inc. and  
18 BMC ("Troy's/BMC") and A. Answer, Inc. and BMC ("Answer/BMC") involvement on the  
19 airport projects which also are never mentioned in BART's complaint (*See*, production request  
20 nos. 2, 3 and 8). Certainly the SLG/Inet contract and Troy's/BMC and Answer/BMC joint  
21 ventures – (d) and (e) above, have nothing to do with BART's action. Also, it is unlikely that  
22 the first three issues (a) – (c) above have little to do with BART's action. Yet the Spencer Parties  
23 have served its subpoenas intending to harass the City by asking the City to prepare witnesses on  
24 subjects that perhaps may have been relevant to the City's action against the Spencer Parties, but  
25 have no relevance it the present BART action. As further support of their abusive practice, first  
26 in the subpoena for the City's James Cheng, the Spencer Parties seek to depose this City's project  
27 manager on the Jail Project concerning "non-HRC contract award issues, and all other claims  
28 issues pertaining to the San Francisco Jail No. 3 Replacement Project". Second, in the subpoena



1 for the City's Balmore Hernandez, the Spencer Parties seek to depose this City's project manager  
 2 on the Moscone Center Project concerning "non-HRC contract award issues, and all other claims  
 3 issues pertaining to the San Francisco Moscone Center Project". Third, in the subpoena for the  
 4 City's Ivar Satero, the Spencer Parties seek to depose one of the City's project manager on the  
 5 airport projects concerning "non-HRC contract award issues, and all other claims issues  
 6 pertaining to the San Francisco International Airport Mater Plan contracts, specifically related to  
 7 Contract Nos. 5500.J, 5600.C, 5602.A, 5670.A, 5701.A, 5750.B and 5520.J." The Spencer  
 8 Parties can show no relevance to the City's awards or other claims on those projects, and the only  
 9 reason the Spencer Parties seek to take those depositions is to both burden the City, and seek  
 10 discovery no longer permitted in the City's action against the Spencer Parties.

11 Under Rule 45 the Court must be cognizant of the expense and intrusive nature of the  
 12 subpoenas on non-party witnesses *Exxon Shipping Co. v. U.S. Dept. of Interior*, 34 F.3d 774, 779  
 13 (9<sup>th</sup> Cir. 1994) Here, the Spencer Parties are literally seeking hundreds of boxes of records,  
 14 containing thousands of documents, and the City's witnesses to review such records, for subjects  
 15 that are not referenced in, or are referenced in but one paragraph, of BART's 40-page, 177  
 16 paragraph complaint.<sup>1</sup> (*See*, FRCivP 45(c)(A)(ii); Schwarzer, Tashima & Wagstaffe, Cal.  
 17 Practice Guide : FED. CIV. PRO. BEFORE TRIAL, *supra*, §11:2303 - 11.2304); and *Mattel*  
 18 *Inc. v. Walking Mountain Products*, *supra*, 353 F.3d 792, 813; and *Exxon Shipping Co.* at p. 779.  
 19 "the Federal Rules authorize a district court to modify or even quash a subpoena in order to  
 20 "protect a party or person from annoyance, embarrassment, oppression or undue burden and  
 21 expenses.") This Court should exercise this authority, especially where it is being propounded  
 22 for improper purposes such as to gain discovery improperly in this separate action.

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23  
 24 <sup>1</sup> Within its Second Amended Complaint, BART never references the 5520.J project, and  
 25 BART only mentions the City's Jail Replacement Project and Moscone Center project at  
 26 paragraph 120 in its Second Amended Complaint. Yet, The Spencer Parties seek to depose Ms.  
 27 Chin, Ms. Ng, Mr. Tom, Mr. Cheng and the City's persons most knowledgeable concerning 12  
 28 topics that concern those projects. (*See*, subpoenas served on Veronica Ng and James Cheng  
 concerning the Jail Replacement project; the subpoenas served on Linda Chin and Balmore  
 Hernandez concerning the Moscone Center project; and the subpoena served on CITY for topic  
 numbers 36 – 47.)

**C. The Court Must Quash The Spencer Parties' Subpoena On The San Francisco District Attorney's Office Where Its Investigative Files Are Privileged.**

In a similar lawsuit brought by the City against Tutor-Saliba Corporation in this District, Tutor-Saliba subpoenaed the records of the San Francisco District Attorney's Office in June 2005 pertaining to the District Attorney's Office's interviews and investigations of Virgilio Talao and the Spencer Parties. The District Attorney's Office moved to quash that subpoena contending any records from, or documents pertaining to, its investigations are: (1) privileged under the attorney/client and attorney work product privileges as provided in *Hickman v. Taylor* (1947) 329 U.S. 495, and *U.S. v. Nobels*, (1975) 422 U.S. 225; and both the official information privilege and investigative file privilege of Federal Rules of Evidence, Chapter 5. Similar protections are also afforded to the San Francisco District Attorney's Office through the California Official Information privilege set forth at California Evidence Code section 1040(b)(2). (See, also *County of Orange v. Superior Court* (Feilong Wu et al), 79 CalApp.4th 759 (2000); *Rivero v. Superior Court (San Francisco)* 54 Cal.App.4th 1048 (1997); Cal. Code of Civ. Proc. Section 1987.1, and *Monarch Healthcare v. Superior Court*, 78 Cal.App.4th 1282, 1284 (2000). In the Tutor-Saliba action, this Court upheld such privileges and quashed Tutor-Saliba's subpoena. For the same reasons, the Court should do the same in this instance.

**1. The Documents in the Criminal Investigation File Are Work Product.**

Federal Rule of Civil Procedure 45(c)(3)(A)(iii) provides in pertinent part that the court by which a subpoena was issued shall quash or modify the subpoena if it requires disclosure of privileged or other protected matter and no exception or waiver applies. The criminal investigation file, which includes witness statements and documents procured to advance the investigation, is protected work product.

**a. The Criminal Investigation File Contains Interviews That Reflect Attorney Mental Impressions.**

In *Hickman v. Taylor*, the United States Supreme Court determined that "attorney work product" included "interviews, statements, memoranda, correspondence, briefs, mental impressions, [and] personal beliefs." (*Hickman v. Taylor*, (1947) 329 U.S. 495, 511.) In *U.S. v.*

1 *Nobles*, the U.S. Supreme Court extended the *Hickman v. Taylor* attorney work product doctrine  
 2 to investigators and other agents working on the attorney's behalf. (*U.S. v. Nobles* (1975) 422  
 3 U.S. 225, 239: "[S]tatements of prosecution witnesses taken by defense investigator are work  
 4 product, but lose protected status if defense seeks to use information in court".)

5 Commencement of litigation is not required. All that is required is the possibility of  
 6 litigation. (*In re Grand Jury Investigation*, 599 F.2<sup>nd</sup> 1224, 1229 (3<sup>rd</sup> Cir. 1979).) In fact, the  
 7 events giving rise to litigation need not have occurred at the time of investigation. (*United States*  
 8 *v. Adlman* 134 F. 3<sup>rd</sup> 1194, 1200 (2<sup>nd</sup> Cir. 1998).) Here, Assistant District Attorney Thomas  
 9 Bogott in charge of the criminal investigation of many persons suspected of theft of public funds  
 10 at the Airport. As part of this investigation, Mr. Bogott, along with a District Attorney  
 11 Investigator, conducted numerous interviews of the Talaos. Mr. Bogott gathered documents  
 12 relevant to the investigation, shaped the direction of the investigation and continues to analyze  
 13 whether a charging decision is appropriate. The investigation remains open so that as additional  
 14 information becomes available an informed charging decision may be made.

15 Mr. Bogott's line of questioning into carefully chosen subject areas, concerning different  
 16 suspects will disclose Mr. Bogott's mental impressions, strategy and legal theories pertaining to a  
 17 charging decision.

18 Further, the identity and organization of the documents Mr. Bogott chose to use during  
 19 the interviews is work product because they reflect his opinion about what is and is not important  
 20 to the investigation. Accordingly, the interviews and the documents should be absolutely  
 21 privileged. (*See, Spork v. Peil*, 759 F. 2<sup>nd</sup> 312, 317-318 (3<sup>rd</sup> Cir. 1985) which provides that while  
 22 individual documents were not work product, selection process itself representing counsel's  
 23 mental impressions and legal opinions as to how evidence and documents relate to issues and  
 24 defenses rendered it absolutely privileged.)

25 The District Attorney's Office interviewed the Talaos during the course of an ongoing  
 26 criminal investigation, rendering all interviews and statements collected entitled to protection by  
 27 the work product doctrine. (*Hickman v. Taylor, supra*, 329 U.S. at p. 511; *U.S. v. Nobles, supra*,  
 28 422 U.S. at p. 239.) This protection necessitates that the subpoena be quashed.

## 2. Discovery Pertaining To The Talaos Is Available From Other Sources.

Although work product that discloses the mental impressions of an attorney should be absolutely privileged, there is no indication that the information requested is unavailable from other sources. (*Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046(9<sup>th</sup> Cir. 2003); *Holmgren v. State Farm Mutual Automobile Insurance Co.*, 976 F.2d 573, 576(9<sup>th</sup> Cir. 1992).) In *Navajo Nation*, the Ninth Circuit held that "[a] party is entitled to discovery of attorney work-product only if the requested party demonstrates that the requested information is not available from other sources." (*Id.* at p. 1046, motion to compel discovery was denied because the information was obtainable from another source.)

The primary purpose of the work product doctrine is to prevent the exploitation of a party's efforts in preparing for litigation. (*Admiral Ins. Co. v. United States District Court*, 881 F.2<sup>nd</sup> 1486, 1494 (9<sup>th</sup> Cir. 1989).) The District Attorney's Office has done an enormous amount of work during the criminal investigation. Because the Spencer Parties may conduct their own discovery pertaining to the Talaos, the motion to quash should be granted.

## 3. The Criminal Investigation File Is Protected By The Official Information Privilege.

Federal common law recognizes a qualified privilege for official information. (*Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (C.A. 9<sup>th</sup> (Cal.) 1990).) To determine whether the information sought is privileged, courts must weigh the potential benefits of disclosure against the potential disadvantages. If the latter is greater, the privilege bars discovery. (*Jepsen v. Florida Bo. of Regents*, 610 F.2d 1379, 1384-85 (5<sup>th</sup> Cir. 1980); *Zaustinsky v. University of California*, 96 F.R.D. 622, 625 (DC Cal. 1983).) Here, the focus of the criminal investigation is not the Talaos. To the contrary, the Talaos' statements provide evidence of wrongdoing by other perpetrators. Release of the confidential information contained in the file would alert the subjects of the investigation to the evidence adduced in the investigation and jeopardize a future charging decision.

The District Attorney's Office requires prosecutorial independence to fulfill its critical function of investigating and, where appropriate, prosecuting criminal defendants. To perform

1 these essential public duties, the District Attorney's Office possesses independent and  
 2 constitutionally and statutorily designated investigative and prosecutorial functions. (*See*, Cal.  
 3 Government Code Section 25303.) Compelled disclosure of the criminal investigative file will  
 4 obstruct the investigatory function of the District Attorney's Office in contravention of Section  
 5 25303. Moreover, there are no benefits to disclosure because there is no indication that Spencer  
 6 Parties cannot obtain discovery from other sources.

7 Like the federal common law official information privilege, California Evidence Code  
 8 Section 1040(b)(2) also protects official information from disclosure when the public interest in  
 9 preserving confidentiality outweighs disclosure. (*County of Orange v. Superior Court (Wu)*, 79  
 10 Cal. App. 4<sup>th</sup> 759 (4<sup>th</sup> Dist. 2000).) Federal courts should attempt to accommodate state privilege  
 11 in federal question cases unless doing so would impair a federal right. (*Leon v. County of San*  
 12 *Diego*, 202 FRD 631, 635 (SD CA 2001). Accordingly, both federal and state law compel the  
 13 conclusion that the motion to quash should be granted.

14 **4. Production Would Be Unreasonable As The Requested Documents**  
 15 **Are Privileged.**

16 5 U.S.C. 522(b)(7) shows that there is a special "privilege" that attaches to law  
 17 enforcement documents when it specifically carves out an exception to information available to  
 18 the public. 5 U.S.C. 522(b)(7) states this exception, in pertinent part, as follows:

19 "(b) This section does not apply to matters that are- . . . (7) records or  
 20 information compiled for law enforcement purposes, but only to the extent  
 21 that the production of such law enforcement records or information (A)  
 22 could reasonably be expected to interfere with law enforcement  
 proceedings, . . . (E) would disclose techniques and procedures for law  
 enforcement investigations . . . or would disclose guidelines for law  
 enforcement investigations . . . or could reasonably be expected to  
 endanger the life or physical safety of any individual . . ."

23 The privileged investigative file is not available to the public and should not be produced  
 24 during discovery.

1  
2 **III. CONCLUSION**

3 For the above state reasons, the Court must quash each of the Spencer Parties' subpoenas.

4 Dated: August 15, 2006

Respectfully submitted,

5 Dennis J. Herrera  
6 City Attorney  
7 Joanne Hoeper, Chief Trial Attorney  
8 James M. Emery, Deputy City Attorney  
9 David L. Norman, Deputy City Attorney  
10 Deputy City Attorneys

11 By: \_\_\_\_\_/s/\_\_\_\_\_  
12 DAVID L. NORMAN

13 Attorneys for  
14 THE SAN FRANCISCO DISTRICT  
15 ATTORNEY'S OFFICE; THE CITY AND  
16 COUNTY OF SAN FRANCISCO AND ITS  
17 EMPLOYEES LINDA CHIN, JAMES CHENG,  
18 JAMES FIELDS, BALMORE HERNANDEZ,  
19 VERONICA NG, IVAR SATERO AND  
20 PRESTON TOM  
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